UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

THOMAS SHINE, Plaintiff, - against - DAVID M. CHILDS and SKIDMORE, OWINGS & MERRILL LLP, Defendants.	04 CV 8828 (MBM) (RLE) **REPLY AFFIDAVIT**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

JOHN P. DURSCHINGER, being duly sworn, deposes and says:

1. I am a licensed architect and an Associate Partner with defendant Skidmore, Owings & Merrill LLP ("SOM").

2. I submit this reply affidavit in further support of defendants' motion to dismiss and/or for summary judgment, and to place before the Court certain documents and information pertinent to the motion.

3. Using the graphic scale provided at the lower left corner of the Olympic Tower site plan (Declaration of Thomas Shine dated April 28, 2005, Ex. B, p. 1) and my knowledge of the dimensions of the Freedom Tower, I reproduced the annexed paired drawings and images of Olympic Tower and Freedom Tower at approximately equal scale to allow direct comparison of the size of the features and characteristics of each.

4. Annexed hereto as Exhibit A is a side-by-side comparison of the entire forms of Olympic Tower and Freedom Tower from a perspective looking northward.

5. Annexed hereto as Exhibit B is a side-by-side comparison of the entire forms of Olympic Tower and Freedom Tower from a perspective looking westward.

6. Annexed hereto as Exhibit C is a side-by-side comparison of the corners of Olympic Tower and Freedom Tower.

7. Annexed hereto as Exhibit D is a side-by-side comparison of the ground floor plans of Olympic Tower and Freedom Tower.

8. Annexed hereto as Exhibit E is a side-by-side comparison of other floor plans of Olympic Tower and Freedom Tower. For this purpose, I used the floor plans for Olympic Tower annexed to the Declaration of Thomas Shine, rather than those annexed to Shine's copyright registration or Supplemental Declaration. For further reference, a side-by-side comparison of Freedom Tower's ground floor plan and the ground floor plan of Olympic Tower annexed to Shine's copyright registration, is annexed hereto as Exhibit F, and a side-by-side comparison Freedom Tower's ground floor plan and the ground floor plan annexed to the Supplemental Declaration of Thomas Shine, is annexed hereto as Exhibit G.

9. Annexed hereto as Exhibit H is a side-by-side comparison of the entrances of Olympic Tower and Freedom Tower.

10. Annexed hereto as Exhibit I is a side-by-side comparison of the facades of Olympic Tower and Freedom Tower.

11. Annexed hereto as Exhibit J is a side-by-side comparison of the Freedom Tower site plan with the Olympic Tower site plan.

12. The design for Russia Tower referenced in the expert affidavit of Richard Meier at ¶ 26 and Ex. F.4 – F.6, created by SOM, is an example of a tall building design featuring a structural diagrid with no horizontal or vertical support on the perimeter (that is, the only horizontal and vertical supports for the building are the floor plates and the central core, respectively). I confirm on behalf of SOM that the four horizontal bands visible on the exterior of that building are not part of the exterior structural diagrid and do not serve a structural purpose. These four horizontal bands function to block downward wind drafts at the face of the

building. Russia Tower was designed in the early 1990s and was published at least as early as 1995 in *Architectural Design*, vol. 65, no. 7/8 (Academy Group Ltd. July-August 1995), at pp. 92, 93.

13. Another example of a design for a building that incorporates a perimeter structural diagrid without any horizontal or vertical structural columns on the perimeter is a tower designed for the Humana Corporation in Kentucky by Norman Foster in the early 1980s, and published in *Architectural Record*, July 1982 (McGraw Hill), pp. 58-59. The diagrid in Foster's building is applied to a non-planar surface, as shown in the images annexed hereto as Exhibit K.

14. Annexed hereto as Exhibit L is a side-by-side comparison of the fifth page of Exhibit G to the Complaint of Thomas Shine (Durschinger Affidavit, sworn to March 25, 2005 ("Durschinger Aff't"), Ex. B) and the second exhibit to the copyright registration for Olympic Tower (Durschinger Aff't, Ex. L, p. 5).

JOHN P. DURSCHINGER

Sworn to before me this
19th day of May, 2005

Notary Public

PATRICIA LYNN ARAGUNDI
Notary Public, State of New York
No. 41-4756931
Qualified in Queens County
Certificate Filed in New York County
Commission Expires Sept. 30, 2006